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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/628,563 | 07/29/2003 | Sheldon M. Retchin | 02940231AA | 4829 |

28960 7590 02/22/2007
HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE, CA 94086

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| EXAMINER |
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NI, SUHAN

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2615

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 02/22/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/628,563 | Applicant(s) RETSCHIN ET AL. | |
| | Examiner Suhan Ni | Art Unit 2615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,15-23,26-32,35,40-43 and 45-51 is/are pending in the application.
- 4a) Of the above claim(s) 48-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,15-23,26-32,35,40-43 and 45-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendment filed 11/28/2006.
2. Newly submitted claims 48-51 directed to an invention that is **independent or distinct** from the invention **originally** claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 48-51 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1, 4, 8-9, 40-43 and 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Bottesch (U.S. Pat. - 5,323,468).

Regarding claim 1, Bottesch discloses an audio device for inherently providing music to a user, comprising transducers (90, 92, 94) for generating the music from musical signals and a support (12) for holding the transducers in vibratory contact with a user's head, wherein each of the transducers is positionable at multiple locations (Fig. 5) on said support as claimed.

Regarding claim 4, Bottesch further discloses the audio device, wherein the musical signals are produced in multiple frequency channels (Fig. 2 and col. 6, lines 16-27).

Regarding claims 8-9, Bottesch further discloses the audio device, including at least one amplifier (70) coupled to one or more of the transducers for amplifying the musical signals and attachment features (Figs. 5-6) for attaching said transducers to said support as claimed.

Method claims 40-43 and 45-47 are similar to claims 1, 4 and 8-9 except for being couched in method terminology; such methods would be inherent when the structure is shown in the references.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 5-7, 10, 15-23, 26-32, 35, 39-43 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bottesch (U.S. Pat. - 5,323,468).

Regarding claim 2, Bottesch does not specially teach a waterproofing material for a housing as claimed. But Bottesch does not specially restrict materials for making of a housing of the transducer, and Bottesch does suggest providing **a fluid** for the transducers (col. 2, lines 55-60). It therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide a waterproof material for housing the transducer as an alternate choice, in order to provide extra protection for the transducer and make the audio device more durable. Furthermore, Bottesch does suggest providing **a suction cup** housing for the transducers (col. 2, line 53). It therefore would have been obvious to one having ordinary

skill in the art at the time the invention was made to be motivated to provide silicon rubber (a waterproof material) for housing the transducers, in order to manufacture the audio device.

Regarding claim 5, Bottesch does not specially teach for partitioning of the multiple frequency channels as claimed. Since providing suitable partitioning for multiple frequency channels is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide certain suitable partitioning, such as frequency overlapping partition for the audio device as a desirer's choice, in order to efficiently and effectively manufacturing the audio device.

Regarding claims 6-7 and 20-21, Bottesch may not clearly teach the transducer as claimed. Since providing suitable transducer for an audio device is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide the suitable transducer for the audio device, in order to provide special effects for users, such as acoustic or virtual perception.

Regarding claims 10 and 35, Bottesch does not specially teach for all details of the attachment features as claimed. Since providing suitable attachment features for mounting transducers to a support of an audio device is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide suitable attachment features, such as snaps for mounting the transducers to the support of the audio device as a desirer's choice, in order to efficiently and effectively manufacturing the audio device.

Regarding claims 15-17, Bottesch further discloses the audio device, wherein a volume of the music from each frequency channel is adjustable (44, 50 and 70) as claimed.

Regarding claims 18-19 and 22-23, Bottesch does not specially teach how to processing the signals as claimed. Since selectively processing acoustic signals for an audio device is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide technique of selectively processing signals for the audio device as a desirer's choice, in order to efficiently and effectively manufacturing the audio device for certain users.

Regarding claim 26, Bottesch further discloses the audio device, wherein the support comprises a band (12) fitting on user's head.

Regarding claims 27-31 and 39, Bottesch further discloses the audio device, comprising a sound source (36) inherently providing the musical signals to the transducers through a wire (46, 48) or wireless (using a cellular device) connection as claimed.

Regarding claim 32, Bottesch discloses an audio device for inherently providing music to a user, comprising transducers (90, 92, 94) for generating the music from musical signals and a support (12) for holding the transducers in vibratory contact with a user's head, wherein each of the transducers is positionable at multiple locations (Fig. 5) on said support as claimed. But Bottesch does not specially teach a waterproofing material for a housing as claimed. But Bottesch does not specially restrict materials for making of a housing of the transducer, and Bottesch does suggest providing a **fluid** for the transducers (col. 2, lines 55-60). It therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide a waterproof material for housing the transducer as an alternate choice, in order to provide extra protection for the transducer and make the audio device more durable. Furthermore, Bottesch does suggest providing a **suction cup** housing for the transducers

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(col. 2, line 53). It therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide silicon rubber (a waterproof material) for housing the transducers, in order to manufacture the audio device.

Method claims 40-43 and 45-47 are similar to claims 2, 5-7, 10, 15-23, 26-32, 35 and 39 except for being couched in method terminology; such methods would be inherent when the structure is shown in the references.

Response to Amendment

5. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any response to this final action should be mailed to:

**Commissioner for Patents
P.O. Box 1450**

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Alexandria, VA 22313-1450

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(571)-272-7505**, and the number for fax machine is **(571)-273-7505**. The examiner can normally be reached on Monday through Thursday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Sinh N. Tran**, can be reached at **(571)-272-7564**.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(571)-272-2600**, or please see <http://www.uspto.gov/web/info/2600>.

February 19, 2007


SUHAN NI
PRIMARY EXAMINER